adapted in shape and color to fit a building of such nature. Upon the termination of the lease and a removal of the equipment by the lessee, the lessor of the theatre sued to recover the value of such equipment, on the ground that they became real fixtures by being annexed to the realty with a view to the purpose for which the realty was employed. *Held,* the plaintiff cannot recover. *Pollard* v. *Alaska Theatre Co.* (Wash.), 161 Pac. 48. See NOTES, p. 391.

UNFAIR COMPETITION—DESCRIPTIVE WORDS—SECONDARY MEANING.—The plaintiff brought this suit to enjoin the use of the name "Toasted Corn Flakes," which it claimed had acquired a secondary meaning in the public mind by being associated with one of plaintiff's products. The name was used on packages essentially different from those used by the plaintiff, and used with no intention to defraud. *Held,* the injunction is refused. *Kellogg Toasted Corn Flake Co.* v. *Quaker Oats Co.,* 235 Fed. 657. See NOTES, p. 395.

WASTE—CUTTING TIMBER—LIABILITY OF TENANT BY THE CURTESY.—The defendant cut and sold timber from the estate of which he was tenant by the curtesy in order to make some needed repairs and improvements on the estate. The plaintiffs brought an action to recover the value of the timber sold, alleging that such acts constituted waste. *Held,* the defendant has not committed waste. *Fleming et al.* v. *Sexton* (N. C.), 90 S. E. 247.

The old common law was very careful to see that the inheritance was not injured while the land was in the possession of a life tenant, and, therefore, no life tenant was permitted to cut more timber than was necessary for estovers. 4 BRACTON, DE LEGIBUS ANGLIÆ 607. And even timber cut for this purpose could not be sold or exchanged. See *Lee* v. *Alston,* 1 Ves., Jr. 78. It was also waste for one to convert wooded land into arable land; because such an act not only changed the course of husbandry but the evidence of the estate. 2 BLACKSTONE, COMM. 282. And the same is true where one changes one species of edifice into another, even though the value of the building is enhanced by the conversion. *Cole* v. *Green,* 1 Lev. 309.

On account of the existence in this country of large tracts of wooded land whose value is often increased by being cleared, the common law doctrine regarding waste has been greatly modified in this respect. It may be stated, as a general rule, that it is never waste to cut timber from land, unless the reversion is permanently injured thereby. 1 WASHBURN, REAL PROP., p. 108; *Sayers* v. *Hoskinson,* 110 Pa. St. 473, 1 Atl. 308. There is no presumption that the cutting of timber will injure the land; but inquiry is made as to the actual effect upon the particular estate in question. *King* v. *Miller,* 99 N. C. 583, 6 S. E. 660. This rule applies as well to tenants by act of the law—as tenants in dower and by the curtesy—as to tenants by acts of the parties. *Owen* v. *Hyde,* 6 Yerg. (Tenn.) 334, 27 Am. Dec. 467. And it seems clear that if a tenant by act of the parties becomes possessed of land valuable chiefly because of the timber, and habitually utilized for that purpose, he can also cut timber from this land, for such is the presumed inten-

tion of the parties. 1 MINOR, REAL PROP., § 291. By the weight of authority, this same right is given to tenants in dower and by the curtesy. 1 WASHBURN, REAL PROP., p. 110; *Macauley* v. *Dismal Swamp Co.*, 2 Rob. (Va.) 507. But as the basis of the rule, the presumed intention of the parties, does not enter into these cases, it is difficult to justify the holding on principle. 1 MINOR, REAL PROP., § 291. See *Brackett* v. *Persons Unknown*, 53 Me. 238, 87 Am. Dec. 548.

In the exercise of their right to cut timber tenants must use the care of good husbandmen, and not lessen the permanent value of the property. *Rutherford* v. *Wilson*, 95 Ark. 246, 129 S. W. 534, 37 L. R. A. (N. S.) 753. Enough timber must be left to satisfy the ordinary needs of the land, and one who cuts all the timber from the land is guilty of waste. *Proffitt* v. *Henderson*, 29 Mo. 325. A tenant by act of the law can clear wooded land and put it under cultivation when reasonably necessary. *Rutherford* v. *Wilson, supra.* The scarcity of timber does not prevent it being used to make repairs on the estate, but only requires that more care be used not to injure the inheritance, the tenant being forbidden to cut young trees. *Calvert* v. *Rice*, 91 Ky. 533, 16 S. W. 351, 34 Am. St. Rep. 240. Nor is it waste to sell timber cut from lands in order to realize funds with which to make needed repairs. *Loomis* v. *Wilbur*, 5 Mason 13, Fed. Cas. 8,498. The decision in the principal case seems sound; since the repairs were badly needed and increased the value of the inheritance.

WILLS—CONSTRUCTION—DEED OR WILL.—An instrument in the form of a deed but which contained a provision that it was to take effect only after the grantor's death, was delivered to the plaintiffs and duly recorded by them. Later the grantor made another deed of the same property to the defendants which was also duly recorded. The plaintiffs now seek to have the second deed cancelled. *Held*, the first instrument is testamentary in character and not a deed. *Simpson et al.* v. *McGee et al.* (Miss.), 73 South. 55. For principles involved, see 3 VA. LAW REV. 324.